

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

KIRK JOHN NORTHUP,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. C-10-85
	§	
RICK THALER,	§	
	§	
Respondent.	§	

**ORDER ADOPTING MEMORANDUM AND
RECOMMENDATION TO GRANT
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On August 10, 2010, United States Magistrate Judge Brian L. Owsley signed a Memorandum and Recommendation recommending that Respondent's motion for summary judgment, (D.E. 30), be granted, and the petition, (D.E. 1), be dismissed. The Magistrate also recommended that Petitioner's ex parte motion, (D.E. 6); motion for judgment of acquittal, (D.E. 11); motion for a new trial, (D.E. 12); and motion for habeas corpus ad subjucendum, (D.E. 13); be denied, and that a certificate of appealability be denied.


On August 30, 2010, petitioner filed Objections to the Magistrate's Recommendations. (D.E. 45.) Having reviewed the findings of fact and conclusions of law therein, as well as the pleadings on file and petitioner's objections, and having made a *de novo* disposition of those portions of the Magistrate Judge's recommended disposition to which objections were raised, see Koetting v. Thompson, 995 F.2d 37 (5th Cir. 1993), 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b), the Court hereby adopts as its own the findings and conclusions of the Magistrate Judge, but amends the Memorandum

and Recommendation (D.E. 41 at 15) to reflect the fact that Petitioner was convicted of robbery, not burglary or aggravated robbery. See Northrup v. State, 2009 WL 1623426, at *1 (Tex. App. – Corpus Christi, June 11, 2009).

Accordingly, it is ORDERED that respondent's motion for summary judgment is granted (D.E. 30), and petitioner's petition is dismissed. It is further ORDERED that petitioner's ex parte motion (D.E. 6); motion for judgment of acquittal (D.E. 11); motion for a new trial (D.E. 12); and motion for habeas corpus ad subjucendum (D.E. 13) are denied. Petitioner is denied a certificate of appealability.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 2nd day of September, 2010.


Janis Graham Jack
United States District Judge